

# Notice of Allowability

Application No.

10/084,471

Examiner

Wesley A. Nicolas

Applicant(s)

CHAN ET AL.

Art Unit

1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to response to restriction submitted 3/11/04.
2. ☒ The allowed claim(s) is/are 43-46.
3. ☒ The drawings filed on 28 February 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 111902
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 041604
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
Wesley A. Nicolas  
Primary Examiner  
Art Unit: 1742

### **DETAILED ACTION**

This is in response to the election submitted March 11, 2004. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 43-46 and 56 are currently pending in this application, with claim 56 being drawn to a non-elected invention.

#### **Election/Restriction**

1. Non-elected claim 56 has been cancelled below by Examiner's amendment as set forth below. Applicant may re-file said claim in a divisional application.

#### **Information Disclosure Statement**

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

#### **Examiner's Amendment**

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided

Art Unit: 1742

by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Raul Tamayo on April 14, 2004.

4. The application has been amended as follows:

**In the claims:**

Claim 43, line 8, "form" has been replaced with --from--;

Claim 56 has been cancelled as being drawn to a non-elected invention.

Applicant may refile said claim in a divisional application.

**Allowable Subject Matter**

5. Claims 43-46 are allowed over the prior art of record.

6. The following is an examiner's statement of reasons for allowance:

The specific method for coating a metallic medical device with a radioactive isotope by immersing the metallic medical device into an aqueous salt solution at a pH of about 10 to about 12 where the metallic medical device acts as an anode was not taught or suggested by the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

Art Unit: 1742

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. 6,077,413 - (Hafeli et al.) - Hafeli et al. is the closest prior art to Applicant's invention however is silent with respect to the pH of the solution, and further Hafeli et al. fails to specify that the substrate acts as the anode. Additionally, since Applicant has a priority date of 12/22/97, Hafeli et al. may not even be applicable prior art notwithstanding it's teaching deficiencies.

Art Unit: 1742

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wesley Nicolas whose telephone number is (571) 272-1247. The examiner can normally be reached on Mon.-Thurs. from 7 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King, can be reached at (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Wesley A. Nicolas  
Primary Examiner

April 16, 2004